

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:W:DEN:TL-N-8978-96
MSHeroux

date: **JAN 14 2000**

to: Case Manager [REDACTED]

from: District Counsel, Denver

subject: [REDACTED], and Subsidiaries
Application of I.R.C. § 6501(e)(1) to Forms 1042

Your office has requested advice regarding the application of the six year assessment statute under I.R.C. § 6501(e)(1) to Forms 1042.

ISSUE

Whether the six-year period of limitations contained in § 6501(e)(1) applies where there is an omission of gross income paid to the taxpayer's foreign parent that exceeds 25 percent of the amount shown on Forms 1042.

CONCLUSION

The six-year period of limitations contained in § 6501(e)(1) applies where there is an omission of gross income paid to the taxpayer's foreign parent that exceeds 25 percent of the amount shown on Forms 1042.

FACTS

[REDACTED] has filed Forms 1042 for the years [REDACTED] and [REDACTED] through [REDACTED]. These returns were filed by March 15th of each following year. The gross income reported on these forms predominantly consists of exempt interest income paid to its parent corporation, [REDACTED], in [REDACTED] England. The interest income is exempt from United States withholding tax as a result of the United States-United Kingdom Tax Treaty.

Rocky Mountain District Examination Division is currently examining the [REDACTED] years of [REDACTED] and its subsidiaries including [REDACTED] (" [REDACTED]"). Transfer pricing adjustments have been proposed for the [REDACTED] years. [REDACTED] filed an APA in September, [REDACTED], for the years [REDACTED] with a rollback request for the [REDACTED] tax years. Rocky Mountain District is presently computing the conforming

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adjustments required under I.R.C. § 482 and Treas. Reg. § 1.482-1(g)(3). These conforming adjustments result in constructive dividend income from ██████████ to ██████████ and then to the foreign parent in ██████████. This income is subject to 5 percent withholding tax under I.R.C. § 1442. The six-year assessment statute of limitations under § 6501(e)(1), if applicable, expires on March 15, ██████████, for the ██████████ tax year. The question is whether the six-year period of limitations contained in § 6501(e)(1) applies where there is an omission of gross income paid to a foreign corporation that exceeds 25 percent of the amount shown on Forms 1042.

ANALYSIS

Section 6501(a) generally provides that the amount of any tax imposed by the Internal Revenue Code shall be assessed within three years from the date the return is filed. Section 6501(e)(1) provides an exception to the normal 3-year period:

If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 percent of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within six years after the return was filed.

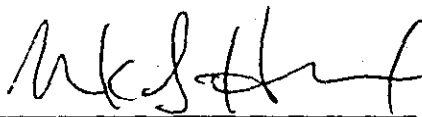
In Northern Ind. Pub. Serv. Co. and Subs. v. Commissioner, 101 T.C. 294 (1993), the Tax Court held that section 6501(e)(1) applies where there is an omission of gross income paid to foreign entities that exceeds 25 percent of the amount shown on Form 1042.

We have reviewed the proposed consent to extend the assessment statute under § 6501(e)(1) for the ██████████ tax year. We approve the use of this consent to extend the statute.

If you have any questions regarding this memorandum, please contact me at 844-2214 ext. 225.

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By:


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